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Title VII of the Civil Rights Act of 1964 has recently celebrated its fifth anniversary.[1] While it is difficult at this point to assess the long-range impact which this controversial piece of civil rights legislation will have on employment and personnel policies throughout the country,[2] it can be safely stated that the Act has thus far created a field day for the nation's lawyers. Perforce, both they and the judiciary have become fellow travelers along the tortuous paths which lead to ultimate enforcement of the Act's substantive guarantees.

Title VII, was the first attempt to secure comprehensive guarantees of equal employment opportunity at the national level. Its passage, over well-organized and powerful opposition, was accomplished after what has been rightly termed "an epic legislative struggle"[3] and the legislative product that emerged provides a classic example of Congressional compromise.[4]

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1. Civil Rights Act of 1964, §§701-716, 42 U.S.C. §§ 2000 (e) to 2000(e)-15 (1964). Title VII, as amended, was signed into law on July 2, 1964. Its effective date of enforcement, however, did not commence until one year later. (Sec. 716(a)).

2. The Equal Employment Opportunity Commission, in its Third Annual Report, submitted to Congress, April 22, 1969, emphasized statistically the progress that has been made since the Act's inception, concluding that "Fiscal 1968 was the year in which the Equal Employment Opportunity Commission began to realize its full potential under Title VII of the 1964 Civil Rights Act as guarantor of job equality for minorities and women. (Report of the Equal Employment Opportunity Commission for fiscal year ending June 30, 1968, transmitted to the House of Representatives April 22, 1969.) The Report, however, candidly acknowledged that there can be no doubt how much remains to be accomplished before "race, color, religion, sex and national origin become the irrelevancies they deserve to be when Americans are seeking or holding a job."

3. Vaas, *Title VII: Legislative History*. 7 B.C. IND. & COM. L. REV. 431 (1966). In this article, the author provides an excellent blow by blow account of what has been aptly described as "Title VII's torrid conception, its turbulent gestation and its frenzied birth." Miller v. International Paper Co., 408 F. 2d 283 (5th cir. 1969).

4. Indeed, the resulting deadlock required the use of cloture for only the second time

Predictably, reaction to the new legislation was mixed. Many commentators registered sharp criticism at what they felt was the statute's glaring failure to provide adequate methods of enforcing the law's nondiscrimination assurances.[5] Others were more optimistic, believing that the voluntary processes of mediation and conciliation which the Act fostered, would, if given a chance, prove successful.[6] There was general agreement, however, that the key to the success or failure of law would in the end analysis depend primarily on the procedural means by which the statute's protections were to be made available.[7] It was recognized that the Act's substantive guarantees would soon become meaningless, unless the victims of employment discrimination could secure meaningful and effective remedial relief. Without the availability of such remedial action, persistent violators would be undeterred and others would have no incentive to seek voluntary compliance, other than moral suasion, the ineffectiveness of which had been manifested over the years. In short, this was the prevailing preliminary evaluation of Title VII and the ensuing years have only confirmed the wisdom of this diagnosis.

Title VII has been termed somewhat less than a model of legal draftsmanship. Nowhere is this indictment more deserved than in the sections dealing with the procedures preliminary to court enforcement. The statute's unique system of public/private enforcement, a product of the Act's negotiated inception, helps to explain the numerous un-

in the Senate's history to cut off debate. Vaas, *Title VII Legislative History, supra.* note 3 at 446; M. SOVERN, LEGAL RESTRAINT ON RACIAL DISCRIMINATION IN EMPLOYMENT, 62 (1966). For a general discussion of Title VII's legislative history see: BNA, THE CIVIL RIGHTS ACT OF 1964: Text, Analysis, Legislative History (1964). See also, Comment, *Enforcement of Fair Employment Under the Civil Rights Act of 1964,* 32 U. CHI. L. REV. 430 (1965); Berg, *Equal Employment Opportunity Under the Civil Rights Act of 1964,* 31 BROOKLYN L. REV. 62, 64-68 (1964).

5. Cooksey, *The Role Of Law In Equal Employment Opportunity* 7 B.C. IND. & COM. 417 (1966); Schmidt, *Title VII: Coverage and Comments,* 7 B.C. IND. & COM. 459 (1966); Rachlin, *Title VII: Limitations and Qualifications* 7 B.C. IND. & COM. 473 (1966). Sovern, *supra* note 4.; Berg, *supra* note 4.

6. Walker, *Title VII: Complaint and Enforcement Procedures and Relief and Remedies,* 7 B.C. IND. & COM. L. REV. 495 (1966). Comment: *Enforcement of Fair Employment Under the Civil Rights Act of 1964, supra* note 4; Morse, *The Scope of Judicial Relief Under Title VII of the Civil Rights Act of 1964,* 46 TEXAS L. REV. 510 (1968). *Cf.* Winter, *Improving the Economic Status of Negroes Through Laws Against Discrimination: A Reply to Professor Sovern,* 34 U. CHI. L. REV. 817 (1967). While reserving judgment on Title VII generally, Professor Winter does comment that the conciliation process favored by the statute is a realistic and forward looking attempt at eliminating employment discrimination.

7. Sovern, *supra* note 4. The author expressed scepticism over the effectiveness of the statute as it pertains to private enforcement, noting that, but for vigorous and frequent intervention of the Attorney General under Sections 707 and 706(e), the hope held out by the law could turn out to a "serious disappointment." See also, Walker, *supra,* note 6; McLaughlin, *Jobs, Workers and the Civil Rights Act,* LAW NOTES, July 1966.

certainties surrounding enforcement of the law's substantive guarantees. Such explanations, however, have provided small consolation to individuals attempting to make the law work for them.

The past four years have found the federal courts struggling manfully to provide answers to the nagging procedural problems left in the aftermath of the Act's "frenzied birth." In the process, litigants were to learn that, as has so often been the case with complex statutory machinery, the law's procedural aspects are often paramount to the substantive provisions to which they are the threshold.

Before examining in detail the procedural framework through which a complaining party must seek relief under the Act, however, it might be helpful to outline briefly Title VII 's substantive coverage and to summarize generally the Act's regulatory scheme.

I. Title VII—Substantive Prohibitions and Enforcement in General

Broadly speaking, Title VII makes it an unfair employment practice for employers, labor organizations and employment agencies to engage in discrimination with respect to practically every facet of the employer-employee relationship with which they respectively come into contact —when such discrimination is based on race, religion, color, sex or national origin. The statute does allow for certain exclusions and exceptions but they are for the most part limited and do not materially detract from the statute's overall comprehensiveness.[8] In general, therefore, Title VII's coverage is broad enough to reach practically every type of discrimination, which, over the years has served as a barrier to full integration of minority groups into the American working force.

In order to effectuate this legislative policy of non-discrimination, Title VII establishes a five-member body, known as the Equal Employment Opportunity Commission (hereinafter referred to as the EEOC). This Commission is charged with the responsibility of receiving and investigating complaints filed by "aggrieved persons" and attempting,

8. Rachlin, *Title VII: Limitations and Qualifications* 7 B.C. Ind. & Com. L. Rev. 473 (1966); Sovern, *supra* note 4; Berg, *supra* note 4, at 62; Kheel, *The Impact of Title VII of the Civil Rights Act of 1964*, BNA Daily Labor Report No. 16, Jan. 26, 1965, at E.1. *Cf.* Benewitz, *Coverage Under Title VII of the Civil Rights Act*, 17 Lab. L.J. 285 (May, 1966). Probably most signicant of Title VII's limitations is the fact that, it does not cover employers of 24 or fewer employees. This limitation, coupled with the other areas excluded from the Act's coverage, have received decidedly vocal criticism from those who felt that Title VII in its final form had been emasculated to the point where comprehensive relief was unavailable. *See,* Schmidt, *supra* note 5.

by methods of "conference and conciliation and persuasion" to eliminate alleged unlawful employment practices whenever it determines that there is "reasonable cause" to believe that violations of the Act have occurred.[9] Members of the Commission are also empowered to initiate unfair employment charges whenever they have reason to believe that the Act has been violated.[10] If, after a finding of reasonable cause, attempts by the Commission at conciliation prove fruitless, enforcement is returned to the hands of the aggrieved party or parties, who are then obliged to file civil suit within a specified time period, or risk forfeiture of their legal remedies.

In addition to suits filed by private "aggrieved parties," Title VII also authorizes the Attorney General to file suit whenever he has "reasonable cause to believe that any person or groups of persons is engaged in a pattern or practice of resistance" to the full enjoyment of rights protected by the Act.[11] Section 706(e) of the Act also permits the Attorney General to intervene in private civil actions whenever he certifies that the case is of general public importance.

Basically, therefore, the statute envisions three primary methods for enforcement: 1) conciliation by the Commission after a finding of reasonable cause 2) judicial enforcement through private civil actions once conciliation has failed or 3) judicial enforcement through "pattern and practice" suits brought by the Attorney General.

II. Procedural Prerequisites for Relief Under Title VII

The foregoing synopsis might suggest that filing a complaint with the Commission, having it thereafter processed, and ultimately obtaining relief, either through private settlement or judicial order, is a rather simple and straightforward process. The voluminous litigation that has thus far engulfed the U.S. District Courts and the Federal Courts of Appeal offers dramatic refutation of any such an assumption. Practically every aspect of the statute addressed to pre-litigation procedures has at one time or another been the subject of a lawsuit.[12]

9. Section 706(a).
10. *Id.*
11. Section 707(a). Many authors expressed high expectations that Attorney General suits under section 707, since self initiating, could serve to compensate for the inadequacies associated with private enforcement under the Act. Sovern, *supra* note 4, at 80, 102; Berg, *supra* note 4.
12. See, Remarks of Hon. Griffin B. Bell, Judge, United States Court of Appeals for the Fifth Circuit, in a speech delivered to Lawyers Seminar on Title VII (Jan. 10, 1969),

Those sections which have as yet to receive the benefit of the judicial interpretation, need only wait their turn.[13]

As a result of this floodgate of litigation, many of the Title VII procedural issues that had initially been the subject of divergent legal thinking have now crystalized to the point where their disposition may be considered settled. Other troublespots, however, still remain. This paper will attempt to highlight both categories.

A. *Unlawful Employment Practice Charges*

a) *The Necessity of Filing Charges Before the EEOC.* Naturally, one of the first questions concerning the new legislation was whether an aggrieved party had to file a charge with the EEOC and comply with the other procedural requirements of Section 706 before he obtained the right to seek judicial relief. Certain remarks made during the Congressional debate tended to indicate that a complainant could file suit at any time, whether or not he had first exhausted the EEOC's services.[14] This position, however, was seemingly at odds with the entire thrust of the statute, which accentuated voluntary settlement of equal employment disputes through the offices of the Commission.[15] Thus far, it has been rejected and the Courts have held, almost without exception, that at least in the case of individual suits, the filing of a charge with the EEOC is a necessary prerequisite to subsequent court enforcement.[16] Applying this principle, private suits have been con-

CCH Employ-Practices — New Developments, ¶ 8082. As an index to the volume of Title VII litigation, between June 1968 and June 1969, more than 140 court decisions applying the statute were issued, most of them involving resolution of procedural questions. *Equal Employment Opportunity Law — Practice and Procedure,* Committee Report, ABA (Section of Labor Relations Law, 1969 at 166).

13. *Id.* See also, comments contained in Jenkins v. United Gas Corp. 400 F.2d 28 (5th Circuit 1968), wherein the Court lists the Title VII litigation pending before it. 400 F.2d at 29, n.1.

14. Senator Humphrey stated during the Senate Debate that: "The individual may proceed in his own right at any time. He may take his complaint to the Commission; he may bypass the Commission, or he may go directly to Court." 110 CONG. REC. 14188 (1964). See also remarks of Senator Javits, *ibid* p. 14191 and Rep. Cellar, *Hearings before the House Committee on Rules in H. Res.* 789, 88th Cong. 2d Sess. 7 (1964). See also, Walker, *supra* note 6.*Cf.* Hall v. Werthan Bag Corp. 251 F. Supp. 184 (M.D. Tenn., 1966). *Contra,* statements of Senators Irvin and Cannon, 110 CONG. REC. 14188 (1964).

15. See Berg, *Title VII, A Three-Years' View,* 44 NOTRE DAME LAWYER 311, 314 (Feb. 1969). BNA, *supra* note 4, at 46. Sovern, *supra* note 4, at 83.

16. Stebbins v. Nationwide Mutual Insur. Co., 382 F.2d 267 (4th Cir. 1967), *cert. denied,* 390 U.S. 910 (1968); Mondy v. Crown Zellerback Corp. 271 F. Supp. 258 (E.D. La. 1967); Samuel v. T.E. Wannamaker, Inc. 70 L.R.R.M. 2637 (D.S.C. 1968); Eleuterio v. Conley 69 L.R.R.M. 2001 (S.D.N.Y. 1968); Edwards v. North American Rockwell Corp. 291 F. Supp. 199, (C.D. Calif. 1968); Watts v. Douglas Aircraft Co. 70 L.R.R.M. 2907 (C.D. Calif. 1968); ILA, Local 329 v. South Atlantic Gulf Coast Dist., 295 F. Supp. 299 (C.D. Tex. 1968). *See also,* Barrister v. Stineberg et al., 56 CCH Lab. Cas. 9071 (S.D.N.Y. 1967).

sistently dismissed against defendants who were not named as respondents in charges filed with the EEOC.[17] In the same vein, a recent Federal District Court has ruled that a plaintiff cannot circumvent the Commission's procedures by resort to direct Court action based on the Civil Rights Act of 1870.[18] As a result of these decisions, the time, place and formality with which unfair employment practice charges must be filed, becomes a matter of critical importance.

b) *Timeliness—When Must Charges Be Filed.* Section 706(d) provides that unlawful employment practice charges "shall be filed within ninety days after the alleged unlawful practice occurred." In cases where the alleged unfair labor practice also falls within the jurisdiction of certain state laws of equal employment opportunity, this statutory limitation period is extended to two hundred and ten days following the occurrence of the alleged discrimination, or thirty days after the state or local authority has concluded its action on the matter, whichever comes first.[19] For the most part, the Courts have regarded these time limitations as mandatory in nature, with strict compliance necessary to invoke the Commission's jurisdiction.[20] However, at least one court has adopted the position that failure to file within the statutory period will not bar subsequent legal action, at least where extenuating circumstances are present.[21]

17. Bowe v. Colgate-Palmolive Co. 2 F.E.P. 121 (7th Cir., Sept. 26, 1969). Mickel v. South Carolina State Employment Service, 377 F.2d 239 (4th Cir. 1967), *cert. denied,* 389 U.S. 877 (1967); Sokolowski v. Swift & Co. 286 F. Supp. 775 (D. Minn. 1968); Samuel v. T.E. Wannamaker, Inc. 70 L.R.R.M. 2637 (D.S.C. 1968); Moody v. Albemarle Paper Co., 271 F. Supp. 27 (E.D.N.C. 1967).

18. Harrison v. American Can Company, —— F. Supp. —— (S.D. Ala. August, 1969). The Court reasoned that Congress in enacting Title VII, which sets forth a comprehensive scheme for handling employment discrimination cases, clearly intended that

> a person charging discriminating employment practices covered by Title VII should first, and promptly, invoke the [its] administrative process, and must give that process, including any applicable state and local equal employment laws, a reasonable opportunity to resolve the charge.

The Court declined to rule whether an employee who first unsuccessfully proceeds under Title VII, may later file suit under the 1870 Act. *Cf.* Jones v. Mayer, 392 U.S. 409 (1968).

19. Sections 706(e) and 706(b).

20. Cunningham v. Litton Industries, 413 F.2d 887 (9th Cir. 1969); Cox v. United States Gypsum Co. 409 F.2d 289 (7th Cir. 1969); Fore v. So. Bell Tel. Co. 293 F. Supp. 587 (W.D.N.C. 1968); Culpepper v. Reynolds Metals Co. 296 F. Supp. 1232 (N.D. Ga. 1968); Banks v. Local Union 136, IBEW, 296 F. Supp. 1188 (S.D. Ala. 1969); Hutchings v. United States Industries, Inc. 60 CCH Lab. Cas. 9260 (E.D. Tex. 1969); Love v. Pullman Co. —— F. Supp. ——, 60 CCH Lab. Cas. 6517 (D.C. Colo. 1969); *Contra,* Hayes v. Seaboard Coast Line Railroad, 46 F.R.D. 49 (S.D. Ga. 1968).

21. Antanopulos v. Aerojet General Corp. 295 F. Supp. 1390 (E.D. Calif. 1968); *cf* Cox v. United States Gypsum, 409 F.2d 289 (7th Cir. 1969). In Antanopulos, the court stated, at 1395:

> filing a charge with the EEOC within ninety days of a discriminatory layoff is not an absolute prerequisite to filing suit based on that layoff where there are extenuating circumstances justifying the delay in filing the charge.

The most vexing problem in connection with Title VII's limitation period concerns the establishment of the precise time when the time period begins to run. In this regard, most courts have followed the distinction utilized by the National Labor Relations Board in questions of this nature, i.e., distinguishing between discriminatory acts which are said to be single transactions, complete in themselves and those construed to be of a continuing nature. In the former instances, the statute begins to run from the date of the discrimination's occurrence, while in the latter, the time does not run until the continuing aspect of the violation has ceased.

Most of the acts of discrimination alleged under Title VII fall into the single act category. Included among these have been discriminatory refusals to hire, discharges, layoffs, transfers and promotions.[22] On the other hand, class action suits, alleging a pattern of discrimination common to an entire group of employees, have been held to charge violations of a continuing nature, and therefore not subject to dismissal for lack of timeliness.[23] It is worth noting also, the Seventh Circuit has recently indicated that an allegation of discriminatory application of recall rights may be implicit in a charge claiming unlawful lay-off, especially where there has been an assertion that the violation is continual in nature.[24] Hence, under appropriate circumstances, this Court of Appeals concluded that the countdown will begin not from the initial lay-off date, but from the time the employee would have been recalled but for the discrimination.[25] Where the act complained of is the single transaction variety, however, the mere fact that the

22. The Commission's General Counsel has ruled that transfers, layoffs and discontinuances of work assignments are not continuing acts, and therefore charges alleging such matters must be filed within ninety days of the discrimination's occurrence. (Opinions of General Counsel, Nov. 26, Dec. 2, 1965, and January 11, 1966, (CCH EMPLOYMENT PRACTICES GUIDE, ¶ 17, 252.304). *See also,* Gardner, *The Procedural Steps of Title VII of the Civil Rights Act of 1964,* 29 ALABAMA LAWYER 80, 88 (1968).

23. Banks v. Lockheed-Georgia Co. 68 L.R.R.M. 2696 (N.D. Ga. 1968), *cf.* Cox v. United States Gypsum, 409 F.2d 289 (7th Cir. 1969).

24. Cox. v. United States Gypsum, 409 F.2d 289 (7th Cir. 1969).

25. The reasons cited by the Court for its conclusion under the facts presented were: (1) A layoff, as distinguished from discharge or quitting, suggests a possibility of re-employment. (2) A layman's claim of "continuing" discrimination, after a discriminatory layoff, readily suggests that he claims there has been subsequent recall or new hiring which discriminates against him. (3) The record shows that the company had bound itself, by its collective bargaining agreement, to consider seniority in making a recall, and the agreement provides that an employee does not lose seniority by reason of layoff until one year has expired. (4) The Commission chose to accept these charges as timely. (5) The company receives notices of other charges of similar current discrimination at or about the same time.
This court, as have many others, also indicated that the EEOC's decision to process the charge, was an important consideration in their determination as to its legal sufficiency. (409 F.2d at 290).

respondent fails to take corrective action, does not thereby convert the discrimination into an abiding offense.[26]

Another question that has arisen in connection with 706(e)'s time limitations is whether resort to contract grievance procedures or other remedies suspends the statutory deadlines. Resolution of this question, however, has posed little difficulty, with the courts holding that the availability of remedies other than those provided by Title VII in no way diminishes the necessity for the charging party to comply with the statutory requirements of the Act.[27]

c) *Deference to State and Local Law.* Sections 706(b) and (c) require the EEOC to defer to state fair employment remedies, both with respect to individuals and commissioner charges, whenever the alleged discrimination occurs in a state or a political subdivision thereof which has a law prohibiting the unlawful employment practice alleged and authorizes it to grant or seek relief from such practice or to institute criminal proceedings with respect thereto.[28] Thus, the Commission is not required to defer to all states having machinery for dealing with discriminatory employment practices, but only those having laws providing for meaningful enforcement.[29]

The Commission has adopted the following policy with regard to deferrals to appropriate state or local agencies under 706(b). When charges are received which may be cognizable under Title VII, the Commission forwards a copy to the appropriate state or local authority and informs the aggrieved party that unless notified to the contrary, the EEOC will consider the charges refiled with it upon completion of the state or local proceedings, or when sixty days have passed, which-

26. Hutchings v. United States Industries, Inc. —— F. Supp. ——, 60 CCH Lab. Cas. 9260 (E.D. Tex. 1969).

27. Culpepper v. Reynolds Metals Co. 296 F. Supp. 1232 (N.D. Ga. 1968); United States v. Georgia Power Co. et al. 301 F. Supp. 538 (N.D. Ga. 1969) (Attorney General's Suit); Bowe v. Colgate-Palmolive Co., 272 F. Supp. 332 (S.D. Ind. 1967). Dent v. St. Louis-San Francisco Ry., 265 F. Supp. 56 (N.D. Ala. 1967); Reese v. Atlantic Steel Co., 282 F. Supp. 905 (N.D. Ga. 1967). *cf.* Glover v. St. Louis-San Francisco Ry. 393 U.S. 324 (1969).

28. Section 706(b).

29. See General Counsel opinions 12/2/65, 12/6/65, 12/8/65 and Opin. Ltr. GC Opin. 665-67. The Commission's interpretation and application of 706(b), whereby it refuses to defer to states whose equal employment laws lack adequate enforcement power, has recently received judicial approval. Crosslin v. Mountain States Tel. and Tel. Co. 71 L.R.R.M. 2705 (D.C. Ariz. August, 1969). In reaching this result, the Court commented that "it would run counter to the Congressional purposes embodied in the Act to require a charging party to pursue a remedy before a state agency which lacks the power to grant relief from the alleged violation, . . . , [The] legislative history clearly indicating "that charges be filed with or referred to only those state agencies that grant relief comparable to that available under Title VII. At present, 33 states and the District of Columbia have statutes to which the Commission holds it must defer.

ever occurs first. This sixty-day period is deemed to commence on the date indicated on the return receipt. Where the state or local agency's proceedings terminate prior to sixty days thereafter, the date that the complainant is notified of the termination is deemed the date on which the charges are filed with the Commission. Where the charges are originally filed with the Commission more than one hundred and fifty days after the alleged act of discrimination, the Commission follows the foregoing procedures, except that in any event, the charges are considered as being filed no later than the two hundred and ninth day after the discriminatory act, thereby preventing the tolling of the statute.[30]

Thus, EEOC regulations provide for the transfer of the charges to the appropriate state and local agencies and their automatic filing with the Commission, following an opportunity for the state or local body to dispose of the matter. EEOC regulations also call for reciprocal cooperation on the part of state and local agencies, with such agencies being required to notify the Commission of all complaints received which fall outside the limits of their jurisdiction. In spite of this general policy of mutual cooperation, however, the Commission refuses to recognize settlements authorized by a state or local agency as binding on it, unless the aggrieved party has in writing, agreed to the terms of the settlement.[31]

In those instances where Section 706(b) requires deference to state and local law, courts have consistently held that such deference is mandatory and that an aggrieved party's failure to utilize state or local remedies is grounds for dismissing a suit later filed under Title VII.[32] This position is consistent with the Act's legislative history which clearly manifests the intention of Congress that state and local agencies not be by-passed in favor of direct federal action.[33]

d) *Who May File Charges.* As noted above, Section 706(a) provides that a charge may be filed either by a person claiming to be aggrieved or by a Commission member.[34] "Aggrieved Party" as that term is used

30. This general policy with respect to co-ordination with state agencies is set forth in 29 C.F.R. § 1601.12.

31. *Id.*

32. See e.g. EEOC v. Union Bank 408 F.2d 867 (9th Cir. 1968); Crosslin v. Mountain State Tel. and Tel. Co. —— F. Supp. —— (D.C. Ariz. August, 1969); Jefferson v. Peerless Pumps, 71 L.R.R.M. 3158 (C.D. Calif. Jan. 15, 1969); Watts v. Douglas Aircraft Co. 70 L.R.R.M. 2907 (C.D. Calif. 1968); Washington v. Aerojet-General Corp. 282 F. Supp. 517 (C.D. Calif. 1968).

33. *See,* BNA, *supra* note 4 at 44. Sovern, *supra* note 4, at 83.

34. Commissioner charges are filed and thereafter processed in the same manner as

in the statute has been held both by the Commission[35] and reviewing courts[36] to include labor unions when they are acting in their representative capacities. The Commission has also recently taken the position that it is unnecessary for the charging party to allege that he has been personally victimized by the discriminatory activity set forth in his complaint.[37]

e) *Formalities of a Charge.* Objections have frequently been raised challenging the legal sufficiency of charges filed with the Commission by private aggrieved parties. Without valid charges, quite obviously, a necessary prerequisite to judicial enforcement is absent.

The statute itself offers very little guidance as to what constitutes a legally sufficient charge, stating with respect to individual charges, only that they must be "in writing and under oath."[38] The Commission, as it has done with many of the Act's other interstices, has attempted in its regulations to give content to the bare bones of the statute, indicating that:

> A charge is deemed filed when the Commission receives from the person aggrieved a written statement sufficiently precise to identify the parties and to describe generally the action or practices complained of. A charge may be amended to cure technical defects or omissions, including failure to swear to the charge, or to clarify and amplify allegations made therein, and such amendments relate back to the original filing date.[39]

This concept of notice pleading (with respect to Title VII charges) has received specific approval in two recent Fifth Circuit opinions.[40] The remarks of Chief Judge Brown in subscribing to the Commission's interpretation typify the reasoning behind this liberalized approach:

> For a lay-initiated proceeding it would be out of keeping with the Act to import common law pleading niceties to this "charge", or in turn to hog-tie the subsequent lawsuit to any such concepts.

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individual complaints, except that the Commissioner initiating the charge, is subsequently precluded from participation in the Commission's "reasonable cause" determination. *See,* Air Transport Association of America v. Hernandez, 264 F. Supp. 227 (D.D.C. 1967).

35. General Counsel Opinion (May 6, 1966), CCH EMPLOYMENT PRACTICES GUIDE, ¶ 17,302.

36. International Chemical Workers Union, Local 795 v. Planters Mfg. Co. 259 F. Supp. 365 (N.D. Miss. 1966).

37. Decision of EEOC, Case No. 68-7-132E (February 17, 1969); CCH EMPLOYMENT PRACTICES GUIDE, ¶ 8110.

38. Section 706(a).

39. 29 C.F.R. § 1601.11(b) (1966).

40. Georgia Power Company v. EEOC, 412 F.2d 462 (5th Cir. 1969).

> All that is required is that it give sufficient information to enable EEOC to see what the grievance is all about.[41]

Courts have also adopted the Commission's liberal approach to the under oath requirement, upholding the position that the initial charge filed with the Commission need not be under oath, as long as it is subsequently sworn to before judicial action is undertaken.[42] The leading case on this point is the Seventh Circuit's opinion in *Choate* v. *Caterpillar Tractor Company*,[43] where the Court observed that:

> Basic to our view is the fact that the "under oath" requirement relates to the administrative procedures which are conducted by the Commission and which precede any court action. The statute gives the Commission no enforcement powers through the adjudicatory process. It allows the Commission only to investigate charges and attempt to gain compliance by informal methods of conference, conciliation and persuasion. Enforcement of the rights of aggrieved parties resides exclusively in the federal courts. When the statute is thus considered, it is clear that the requirement for verification of charges lodged with the Commission relates solely to the administrative rather than to the judicial features of the statute. We believe that the provision is directory and technical rather than mandatory and substantive.[44]

Persuasive in the eyes of these courts has been the fact that the Commission itself accepted the charges. Judge Swygert summed up this reasoning in *Choate* when he stated that "if the Commission undertakes to process a charge which is not under oath, we perceive no reason why the District Court should not treat the omission of the oath as a permissive waiver by the Commission. To deny relief under these circumstances would be a meaningless triumph of form over substance."[45] Again, as with the question of sufficiency of charges, the courts, as a matter of equity, have been unwilling to close the doors of the courthouse merely because of technical oversights on the part of an untrained and often unschooled complainant.[46]

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41. Jenkins v. United Gas Corp. 400 F.2d 28, 30 n.3 (5th Cir. 1968).
42. Weeks v. Southern Bell Tel. & Tel. Co., 408 F.2d 228 (5th Cir. 1968); Russell v. Alpha Portland Cement Co., 69 L.R.R.M. 2256 (N.D. Ala. 1968); Georgia Power v. EEOC, 295 F. Supp. 950 (N.D. Ga. 1968).
43. 402 F.2d 357 (5th Cir. 1969).
44. 402 F.2d at 358.
45. *Id.* at 359.
46. This rationale has been expressed in several of the recent appellate decisions. *See*, Jenkins v. United Gas Corp., 400 F.2d 28 (5th Cir. 1968); Dent v. St. Louis-San Francisco Ry., 406 F.2d 399 (5th Cir. 1969); Miller v. International Paper Co., 408 F.2d 283 (5th Cir. 1969).

Thus, the weight of authority at present, holds that any written statement, accepted by the Commission within the prescribed time limits, which sets forth enough factual essentials to indicate the nature of the unlawful employment practice complained of, whether or not under oath, will be considered a legally sufficient basis on which to launch subsequent legal action.

In the case of Commissioners' charges, Section 706(a) adds the additional requirement that such a charge "should set forth the facts upon which it is based." Two recent District Court decisions have split over the interpretation to be given this section. One upheld a Commissioner charge containing only general allegations of employment discrimination, noting that the Courts have applied much less stringent standards towards pleadings in the administrative process than in other types of litigation,[47] while the second reached the contrary result in a case involving much the same type of conclusory pleading.[48] The latter opinion held that if the requirement of setting forth the facts on which the charge is based was to have any meaning, it must at least require the "Commissioner to show on the face of the charge that he possessed information which he believed to be a reasonable basis for his initiating the charge."[49]

This problem also occurs with respect to suits brought by the Attorney General under Section 707 which require the complaint to set forth, "facts pertaining to such pattern or practice." The most recent District Court decision follows the general trend towards requiring only adequate notice of the nature of the charges, allowing defendants to determine the precise details through the discovery process.[50] Other decisions, however, are in conflict.[51]

47. Local 104, Sheet Metal Workers v. EEOC 70 L.R.R.M. 2345 (N.D. Col. Jan. 14, 1969). The Court, relying on NLRB v. Fant Milling, 360 U.S. 301 (1959), held that the function of charges within the administrative system was merely "to set in motion the machinery of an inquiry." *See,* 1K. DAVIS, ADMINISTRATIVE LAW TREATISE § 804, at 523 (1958). Underlying the Court's reasoning was the fact that at least one purpose of a Commissioner's charge was to provide a way of insulating private charging parties from respondent retaliation. Yet, the Court reasoned if a Commissioner's charge was required to set forth specific facts and information, this purpose would be largely nullified. The respondent, on the other hand, argued that, without specific allegations, it would be impossible to intelligently contest evidenciary requests by the Commission or to successfully litigate whether a subsequent demand was relevant to the charge. (70 L.R.R.M. at 2347).

48. Bowaters Southern Paper Corp. v. EEOC, 71 L.R.R.M. 2113, (E.D. Tenn. May 5, 1969).

49. 71 L.R.R.M. at 2118.

50. United States v. Georgia Power Co., 301 F. Supp. 332 (N.D. Ga. 1969).

51. United States v. H. K. Porter Co. Civil Action No. 67-363 (N.D. Ala., filed July 28, 1967); United States v. St. Louis-San Francisco R. Co. (E.D. Mo. 1967), (decisions not

In view of the fact that 706(a) and 707 both require charges which disclose the factual basis of the complaint, whereas no such requirement is placed on individual charges, the former would certainly seem to demand the more particularization. Just how much more specific and detailed a Commissioner's charge and Attorney General's complaint must be, however, is a matter that has yet to be finally determined. Since, as a matter of practice neither have thus far been delineated with any more precision than suits filed by private individuals, nor have they satisfied more than the notice pleading requirements applicable to common law suits generally, the federal courts may soon be providing further guidance on this subject.

In summary, it is evident that both the Commission and the courts regard the formalities for a valid unfair employment practice charge as minimal. The rationale behind this has been that the substantive rights which the statute was designed to protect should not be sacrificed because of procedural irregularities on the part of either the victims seeking relief, or the Commission whose objective is to provide that relief. It should not be forgotten, however, that respondents still deserve sufficient indication of the charges against which they must defend, especially if they are to intelligently assess informational demands from private litigants, the Commission and the Attorney General. Here, as elsewhere in applying the statute, the legitimate interests of both the charging and charged parties must be reconciled.

B. *Investigations*

Once the Commission is in receipt of proper charges, it must then determine whether there exists reasonable cause to believe that the alleged violations have in fact occurred.[52] Though the Commission has taken the position that a finding of reasonable cause it not essential to subsequent judicial enforcement,[53] the courts themselves are in disagreement as to whether charges should be dismissed where no such finding has been made. Making a reasonable cause finding a jurisdictional prerequisite would appear to be better interpretation. Like the

officially reported, holding that more than conclusionary averments are required by 707); *Contra,* United States v. I.B.E.W. Local 683, 270 F. Supp. 233 (C.D. Ohio 1967); United States v. Building & Construction Trades Council of St. Louis 271 F. Supp. 447 (E.D. Mo. 1966); United States v. Dillon Supply Co. (E.D.N.C. 1967) (not officially reported).

52. Section 706(a).

53. EEOC Legal Interpretations (General Counsel Opinion of Sept. 7, 1965), CCH EMPLOYMENT PRACTICES GUIDE ¶ 17,251.083 (1965).

question of whether the EEOC need be utilized at all, a reasonable cause finding is similarly a statutorily established procedure for screening discrimination complaints.[54] If such a determination were to have no bearing on future judicial action, then it would be hard to see what purpose this legislatively decreed finding would have, save adding another delay period before the right to court enforcement would mature. Moreover, a reasonable cause finding represents such a minimal standard that those complaints which cannot pass this test would seem to have little likelihood of judicial success anyway.[55] Logic, alone, therefore would seem to indicate that Congress intended the investigative process to have a meaningful role in sifting out spurious complaints at the administrative level.[56] However, because of the relatively few decisions in point thus far, a definitive answer to the legal significance of a no cause finding must await further litigation.

a) *Notice of Charges.* Because of the extremely heavy volume of charges filed with the Commission during its brief history, and because of the lack of funds and trained personnel, charges often sit dormant for many months before the Commission's staff are ready to commence their investigations.[57] During this period, the respondent as a rule is unaware that charges have been filed against him. Usually, the first time that he is informed of this fact is when the Commission's investigator contacts him to arrange a time for a meeting. In the meantime, the Commission has usually contacted the charging party and familiarized itself with the principal facts surrounding the charge.[58]

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54. Green v. McDonnell-Douglas Corp. 299 F. Supp. 1100 (E.D. Missouri, 1969); Burrell v. Kaiser Aluminum & Chemical Corp. 287 F. Supp. 289 (E.D. La. 1968); *cf.* Davis v. The Boeing Co. 2 F.E.P. 62 (W.D. Wash. August 20, 1969), (finding of reasonable cause held to be a necessary prerequisite). *Contra,* Aiken v. N. Y. Times 2 F.E.P. 63 (S.D.N.Y. August 4, 1969); Taylor v. Armco Steel Corp. 71 L.R.R.M. 2594 (S.D. Texas June 9, 1969). *cf.* Edwards v. North American Rockwell Corp. 291 F. Supp. 199 (C.D. Calif. 1968).

55. Even under the relaxed "reasonable cause" standard, a sizable percentage of cases are dismissed by the Commission. In fiscal 1966 and fiscal 1967, for instance, "cause" findings were made against respondents in only about 60 percent of the cases investigated. *(Equal Employment Opportunity Law-Practice and Procedure* (Committee on Equal Employment Opportunity Law 1969) *supra* note 12, at 184).

56. A contrary view, however, is expressed by Berg in *Title VII: A Three Years' View, supra* note 15, at 317, 318.

57. EEOC, FIRST ANNUAL REPORT 5 (1967), Rosen, Book Review 81, HARV. L. REV. 276, 282 (1967). See also, Miller v. International Paper Co. 408 F.2d 283 (5th Cir. 1969). At the present time, the Commission has a backlog of 18 months. Of this period, the delay factor before investigation begins is 4 or 5 months. *See,* statement of former Commission Chairman Clifford Alexander (68 LAB. REL. REP. 200).

58. N. POWERS, NOW HEAR THIS (National Association of Manufacturers & Plans for Progress), 6, (1969).

Though the Act provides a ninety-day limitation period for filing charges with the Commission, the statute specifies no time period within which the Commission must serve a copy of such charges on a respondent. One appellate court has indicated that this absence of statutory direction is indicative that the Commission is under no time limitation in this regard.[59] Indeed, this is the position which the EEOC has in actual practice adopted.[60] The Fifth Circuit in its *Georgia Power* decision has registered less than whole-hearted endorsement of this approach, however, suggesting that the Commission might be well-advised to furnish the charged party with a copy of the original charge immediately, with a notation that a formal charge will be shortly forthcoming.[61]

The statute's silence with respect to the service of charges is one of the most glaring deficiencies in the legislation. It not only presents serious questions of due process, but in many instances only serves to further delay voluntary settlement. The Commission justifies this withholding of formal charges until the time for investigation on the grounds that this alleviates the threat of reprisals against charging parties.[62] There appears to be no satisfactory reason, however, why respondents cannot be notified of the charges immediately without sacrificing the interests of those resorting to the Commission. Even if the basic assumption that respondents' retaliation occurs frequently enough to present a serious problem is warranted, there are feasible alternatives which provide at least as adequate protection for charging parties.[63] The cause of justice is not served by elevating one set of rights while suppressing others, especially when the two are not irreconcilable.

59. Local 5, IBEW v. EEOC, 398 F.2d 248 (3rd Cir. 1968). The Court likened the Commission to the National Labor Relations Board and other federal agencies in this respect, in that they are under no time limitation within which charges must be served or the investigation commenced. Two District Courts have also reached the same conclusion. Pullen v. Otis Elevator Co., 292 F. Supp. 715 (N.D. Ga. 1968); Blue Bell Boats, Inc. v. EEOC, 295 F. Supp. 1060 (M.D. Tenn. 1968).

60. Powers, *supra* note 58.

61. Georgia Power Co. v. EEOC, 412 F.2d 462 (5th Cir. 1969).

62. Remarks of Daniel Steiner, General Counsel of the EEOC, at the seminar on Equal Employment Opportunity Law, ABA, March 28, 1969. The Commission takes the position that the immediate service of a complaint would in many instances disclose the identity of the charging party(ies) and subject them to possible retaliation while their complaints await Commission action.

63. One possible solution would be to block out all reference to the names of charging parties on the copies of the charges forwarded to the respondent. Such a complaint would still remain a valid charge within the criteria of 706(a). *See*, Georgia Power Co. v. EEOC, 412 F.2d 462 (5th Cir. 1969). Another solution would be to immediately advise the complainants of their legal recourses should they be the victims of further discrimination. Of course, the best solution would be to eliminate the delay and commence investigation immediately.

b) *Demand for Production of Evidence.* During the initial meeting between the EEOC investigator and the respondent, the former will normally either orally request certain records pertaining to the company's, union's or employment agency's operations or, as is the more common practice, request in writing a list of specific records, data and other information which the Commission deems pertinent. Often, these requests are quite detailed and seek to elicit extensive information on employment policies dating back for a number of years.

Under Section 710 the Commission is granted authority in connection with the investigation of unlawful employment practice charges "to examine witnesses under oath and to require the production of documentary evidence relevant or material to the charge under investigation." If a respondent refuses to cooperate in supplying the Commission with the sought after information, the Commission will issue him a formal demand letter. If the respondent still refuses to comply, Section 710(b) of the statute requires him to petition "the Federal District within which he resides, is found, or transacts business" within twenty days after receipt of the demand, should he desire the demand modified or set aside. Failure to do so on the part of a respondent precludes him from raising any objections which he might have raised by a timely petition.[64] Thus, once a formal demand is issued, the onus is shifted to the respondent. At this juncture he has the alternative of challenging the demand, or continuing to resist, at the risk of waiving objections which could have been raised within the twenty-day period, should the Commission later seek a court order under 710(b).

Section 710, as you might suspect, has given rise to considerable litigation thus far. Most of the objections raised against EEOC evidenciary demands under this section have concerned the scope of the Commission's inquiries and the relevance of the information sought in relation to the charges under investigation. For the most part, the Commission's demands have been upheld,[65] though in a number of

64. Overnite Transportation Co. v. EEOC, 397 F.2d 368 (5th Cir. 1968). In *Overnite*, the respondent argued unsuccessfully that relevance was a jurisdictional criteria required by the statute and could not be waived by the mere failure to apply for relief within the twenty day period.

65. Typical of the leeway that the Courts have granted the Commission is the Fifth Circuit's recent decision in Georgia Power Co. v. EEOC, 412 F.2d 462 (5th Cir. 1969), where the lower court's order granting the Commission access to information concerning all job openings and persons hired in one of the respondent's offices over a 6 month period, was approved. The employer, in this case, had maintained that only relevant records were those pertaining to the "aggrieved applicant, persons hired in preference to her and the job in question."

instances, the courts have narrowed the breadth of their more comprehensive requests.[66]

In addition to challenging relevance and materiality of the information sought, a respondent's petition under 710(b) may also contest the underlying jurisdictional basis for the Commission's investigation. Thus, the failure of a charging party to exhaust state remedies as required by Section 706(b), may be raised as a defense to Commission demands, since such a failure deprives the Commission of its jurisdiction to entertain the charge.[67] Likewise, defects in the charges filed with the Commission and other procedural shortcomings, such as timeliness, can be raised in conjunction with a petition to set aside an evidenciary demand by the Commission.[68] Thus, 710(b) not only offers a method for contesting the propriety of the EEOC's evidenciary demand, but also in certain instances provides a shortcut way of resolving some of the difficult procedural questions implicit in Title VII litigation, without the delay normally associated with a substantive adjudication. This procedure should prove extremely useful for respondent's attorneys, in that it furnishes them with a way of segregating the issues and gaining a more intelligent assessment of their client's exposure with respect to subsequent conciliation or court action.

c) *Conference, Conciliation and Persuasion.* Once the Commission has determined that "there is reasonable cause to believe that the charge is true," Section 706(a) of the statute states that it "shall endeavor to eliminate any such alleged unlawful employment practice by informal methods of conference, conciliation and persuasion." This requirement has led to one of the most litigated of all the Title VII's procedural debates, a debate which is now all but settled.

Many of the first courts that examined the language of 706(a), concluded that conciliation on the part of the EEOC was a mandatory requirement and hence, courts were without jurisdiction until the Commission had at least made attempts at actual conciliation.[69] On its

66. See, Union Bank v. EEOC, 296 F. Supp. 313 (C.D. Calif. 1967); Blue Bell Boots, Inc. v. EEOC, 295 F. Supp. 1060 (M.D. Tenn. 1968); Georgia Power Co. v. EEOC, 295 F. Supp. 950 (N.D. Ga. 1968); Local 104, Sheetmetal Workers v. EEOC, 70 L.R.R.M. 2345 (N.D. Calif. Jan. 14, 1969). *cf.* Baxter v. Savannah Sugar Refining Co. 46 F.R.D. 56, (S.D. Ga. 1968), with respect to the scope of interrogatories in connection with a Title VII suit.

67. EEOC v. Union Bank, 408 F.2d 867 (9th Cir. 1968).

68. Georgia Power Co. v. EEOC, 295 F. Supp. 950 (N.D. Ga. 1968); Bowaters Southern Paper Corp. v. EEOC, —— F. Supp. ——, 71 L.R.R.M. 2113 (E.D. Tenn. May 5, 1969). *Contra,* Blue Bell Boots v. EEOC, 295 F. Supp. 1060 (M.D. Tenn. 1968).

69. Dent v. St. Louis-San Francisco Ry. 265 F. Supp. 56 (N.D. Ala. 1967); Choate v.

face, this interpretation is consonant with Section 706(e) which provides for civil action by aggrieved parties if the "Commission has been unable to obtain voluntary compliance with this title." This interpretation is also consistent with the great emphasis which the statute places on voluntary settlement processes and also finds some support in the statute's legislative history.[70] Nonetheless, interpreting conciliation as a jurisdictional prerequisite to court enforcement ran directly counter to very practical policy considerations. As alluded to before, the Commission was woefully understaffed, with the result that the average length of time for the Commission to fully process a case, including efforts at conciliation, fluctuated between eighteen months and two years.[71] Quite obviously, if an aggrieved party were required to await the completion of the Commission's mediative efforts, the effectiveness of available remedies would be largely dissipated.

Confronted with these stark realities, the overwhelming weight of authority, including the only federal appellate decisions to rule on the subject, now hold that efforts by the Commission to conciliate do not constitute a necessary precondition to judicial action under Title VII.[72] Technically, the courts have accomplished this result by interpreting the word "unable" as it is used in 706(a), to mean "simply unable" and "that a Commission prevented by lack of appropriations and inadequate staff from attempting persuasion is just as unable to obtain voluntary compliance as a Commission frustrated by the recalcitrance of an employer or a union."[73] Philosophically, the courts' position is probably best expressed by the oft-quoted passage from *Quarles v. Philip Morris, Inc.:*

Caterpillar Tractor Co., 274 F. Supp. 776 (S.D. Ill. 1967); Evenson v. Northwest Airlines, 268 F. Supp. 29 (E.D. Va. 1967).

70. After extensive examination, Appellate Courts, however, have observed that the Act's legislative history is inconclusive on this point. *See,* Johnson v. Seaboard Coast Line Ry., 405 F.2d 645 (4th Cir. 1968); *cert denied, sub nom:* Pilot Freight Carriers, Inc. v. Walker, 394 U.S. 918 (1969); Dent v. St. Louis-San Francisco Ry. 406 F.2d 399 (5th Cir. 1969); Miller v. International Paper Co. 408 F.2d 283 (5th Cir. 1969).

71. *Supra* note 57. See also, Note, 82 HARV. L. REV. 834, 849 (1969).

72. Choate v. Caterpillar Tractor Co., 402 F.2d 357 (7th Cir. 1968); Johnson v. Seaboard Coast Line R.R., 405 F.2d 645 (4th Cir. 1968); Miller v. International Paper Co., 408 F.2d 283 (5th Cir. 1969); Dent. v. St. Louis-San Francisco Ry., *supra* 406 F.2d 399 (5th Cir. 1969); Walker v. Pilot Freight Carriers, Inc., 405 F.2d 645 (4th Cir. 1969); IBEW v. EEOC, 398 F.2d 248 (3rd Cir. 1968); Wheeler v. Bohn Aluminum Co., 68 L.R.R.M. 2762 (W.D. Mich. 1968); Harris v. Orkin Exterminating Co., 293 F. Supp. 104 (N.D. Ga. 1968); Kendrick v. American Bakery Co., 69 L.R.R.M. 2012 (N.D. Ga. 1968); Bing v. Roadway Express, 70 L.R.R.M. 3043 (N.D. Ga. 1968); Noon v. Kaiser Steel Corp. 60 CCH Lab Cas. 9313 (C.D. Calif. Aug. 20, 1969). In the minority are Burrell v. Kaiser Aluminum Corp., 287 F. Supp. 289 (E.D. La. 1968); Green v. Ford Motor Co., 70 L.R.R.M. 3180 (W.D. Okla. Mar. 7, 1969).

73. Johnson v. Seaboard Coast Line R.R., 405 F.2d 649 (4th Cir. 1968), *cert. denied,* 89 S. Ct. 1189 (1969).

> The Plaintiff is not responsible for the acts or omissions of the Commission. He, and the members of his class, should not be denied judicial relief because of circumstances over which they have no control. The plaintiff exhausted administrative remedies and satisfied the requirements of the Act by filing a complaint with the Commission and awaiting its advice. He is not required to show that the Commission had endeavored to conciliate. To insist that he do so, would require him to pursue an administrative remedy which may be impossible to achieve. If the Commission makes no endeavor to conciliate, the remedy is ineffective and inadequate.[74]

Thus, it is now well established that an effort by the EEOC to conciliate an unlawful employment practice charge is not a condition precedent to the charging party's right to later seek judicial relief.

d) *Thirty Day Notice Letter.* Once the Commission has finished its investigation and completed whatever conciliation attempts it is able to undertake, it is required under 706(e) to "so notify the person aggrieved and a civil action may, within thirty days thereafter, be brought against the respondent." Because of the delay factor highlighted above, the Commission has issued regulations under which either "the charging party or the respondent may upon the expiration of sixty days after the filing of the charge or at any time thereafter demand in writing that such (thirty day) notice issue and the Commission shall promptly issue such notice to all parties."[75] The avowed purpose of this regulation is to allow potentially fruitful conciliation attempts to continue, while giving an individual the right to precipitate the EEOC thirty-day letter and thereby hasten his day in court.[76]

The thirty-day notice referred to in the statute which triggers the time for filing suit, has been interpreted to mean notice in writing. The fact that the Commission's conciliation efforts have failed and such failure is known to the charging party, is insufficient to ignite the running of the thirty-day period.[77] Unlike a number of the statute's other requirements, this thirty-day period has been construed as a

74. 271 F. Supp. 842, 846-47 (E.D. Va. 1967). This passage has been quoted with approval by the Fourth Circuit in Johnson v. Seaboard Coast Line R.R., 405 F.2d 645 (4th Cir. 1968); the Fifth Circuit in Miller v. International Paper Company, 408 F.2d 283 (5th Cir. 1969); and cited by the Seventh Circuit in Choate v. Caterpillar Tractor Co., 402 F.2d 357 (1968).

75. 29 C.F.R. § 1601.23(b).

76. See, Cunningham v. Litton Industries, 413 F.2d 887 (9th Cir. 1969).

77. Cox v. United States Gypsum Co., 409 F.2d 289 (7th Cir. 1969); Pullen v. Otis Elevator Co., 292 F. Supp. 715 (N.D. Ga. 1968). *cf.* Miller v. International Paper Co., 408 F.2d 283 (5th Cir. 1969).

mandatory limitation period. "Aggrieved individuals" must file civil suit within the prescribed period, or face dismissal of their complaints.[78] However, where application to a Federal District Court for appointment of counsel in accordance with section 706(e) has been made within the 30-day time period, it has been held that this requirement has been satisfied.[79]

e) *Overall Time Limitations.* It has been argued that in addition to the requirement that court action be brought within thirty days after receipt of the Commission's notice, the suit must also have been initiated within one hundred and eighty days after the alleged discrimination's occurrence. This figure is obtained by adding the initial ninety-day statute of limitations for filing charges with the Commission, and the thirty days for filing suit after notice, to the sixty-day period which section 706(e) speaks of as the time within which the Commission has to investigate and conciliate.[80] Like the conciliation prerequisite argument, this contention found acceptance among some of the earlier decisions,[81] but has at present been overwhelmingly rejected, the sixty-day period allotted by 706(e) being held to be "directory," rather than "mandatory."[82]

Here again, the practical dictates necessitated this result. Obviously, to require the Commission to complete its functions of investigating, rendering reasonable cause decisions and conciliating,

78. Cunningham v. Litton Industries, 413 F.2d 887 (9th Cir. 1969); Miller v. International Paper Co., 408 F.2d 283 (5th Cir. 1969); Choate v. Caterpillar Tractor Co., 402 F.2d 357 (7th Cir. 1968); Antonopulos v. Aerojet Corp., 295 F. Supp. 1390 (E.D. Calif. 1968); Harrison v. American Can Co., 2 F.E.P. 1 (S.D. Ala. July 8, 1969).

79. Application for counsel pursuant to section 706(e) has in two instances been held to evidence sufficient compliance with the statute's 30 day requirement, even though the complainant did not file suit until some time after the expiration of the 30 day period. McQueen v. E.M.C. Plastic Co., 71 L.R.R.M. 2637 (E.D. Texas June 4, 1969); Witherspoon v. Mercury Freight Lines, 70 L.R.R.M. 2913 (S.D. Ala. 1968).

80. Section 706(e) reads in part:

> If within thirty days after a charge is filed with the Commission or within thirty days after expiration of any period of reference under subsection (c) (except that in either case such period may be extended to not more than sixty days upon a determination by the Commission that further efforts to secure voluntary compliance are warranted), the Commission has been unable to obtain voluntary compliance with this title, the Commission shall so notify the person aggrieved and a civil action may, within thirty days thereafter, be brought against the respondent named in the charge . . .

81. Miller v. International Paper Co., 290 F. Supp. 401 (S.D. Miss. 1967); Cunningham v. Litton Industries, 66 L.R.R.M. 2697 (C.D. Calif. 1967); Hall v. Werthan Bag Corp., 251 F. Supp. 184 (M.D. Tenn. 1966).

82. Cunningham v. Litton Industries, 413 F.2d 887 (9th Cir. 1969); Miller v. International Paper Co., 408 F.2d 283 (5th Cir. 1969); Choate v. Caterpillar Tractor Co., 402 F.2d 357 (7th Cir. 1968); Antonopulos v. Aerojet-General Corp., 295 F. Supp. 1390 (E.D. Calif. 1968); Pullen v. Otis Elevator Co., 292 F. Supp. 715 (N.D. Ga. 1968); *See,* Stebbins v. United States, 382 F.2d 267 (4th Cir. 1967); Cox v. United States Gypsum Co., 409 F.2d 289 (7th Cir. 1969).

all within sixty days would be to demand the impossible. Moreover, since Congress throughout its debates, constantly stressed the objectives of informal conciliation, any interpretation which for all intents and purposes would nullify this aspect of the Commission's operations, could hardly be sustained. Hence, the more recent cases now uniformly held that 706(e) should be read as providing neither for a gross one hundred and eighty-day limitation period, nor a sixty-day period within which the EEOC must act on a given charge.

Thus, the only two significant time limitations for purposes of subsequent court action are: (1) the ninety-day limitation period for filing charges after the occurrence of the alleged discrimination and (2) the thirty-day period for filing civil suit after receipt of notice from the Commission.

C. *Judicial Enforcement*

a) *Mootness.* Having complied with all the procedural technicalities associated with filing a charge, and equipped with a thirty-day notice letter from the Commission, the aggrieved party is finally eligible to file a civil suit to obtain the "appropriate relief" which the statute holds out to victims of employment discrimination. By this time, however, a considerable amount of time may have elapsed since the alleged discrimination took place. In the meantime, also, the respondent may have endeavored to rectify his wrongdoing by agreeing to take the action which the charging party felt was his due. Assuming this to be the case, the question then arises as to whether the respondent's efforts at a private settlement have rendered the original complaint moot.

Several courts have considered this issue and all have concluded that such settlement offers do not necessarily deprive a charging party of his right to judicial relief.[83] The real test in such cases appears to be whether the proposed action on the part of the respondent offers full and complete relief to the complainant from the effects of the discrimination. For instance, in *Jenkins* v. *United Gas Corporation,*[84] it was held that neither the offer of a promotion by a respondent nor its acceptance by a charging party subsequent to the filing of charges, renders a Title VII suit moot, since the question of back pay was still

83. Jenkins v. United States Gas Corp., 400 F.2d 28 (5th Cir. 1968); Rosen v. Public Service Electric and Gas Co., 409 F.2d 775 (3rd Cir. 1969). *See,* Parham v. Southwestern Bell Telephone Co., 69 L.R.R.M. 2071 (E.D. Ark. 1968).
84. 400 F.2d 28.

litigable. Even more importantly from the standpoint of legal precedent was the Fifth Circuit's reasoning that a suit for vindication of employment rights under Title VII is "more than a private claim by an employee seeking a particular job." It is "perforce a sort of class action for fellow employees similarly situated," which a "court over the suitor's protest may not do it for him [dismiss his complaint] without ever judicially resolving by appropriate means (summary judgment, trial, etc.), the controverted issue of employer unlawful discrimination."[85] Thus, for purposes of bringing suit, the court treated the plaintiff as a "private Attorney General" representing interests other than those peculiar to himself.[86] Likewise, in *Rosen* v. *Public Service Electric and Gas Company,*[87] the Third Circuit refused to hold that the subsequent modification of an alleged discriminatory pension plan mooted a complaint based on the original pension agreement, since it was possible that some harm may have inured to the charging class before the pension plan's modification.[88]

Thus, it is clear that courts will thoroughly examine the nature and adequacy of a respondent's settlement proposal to determine whether the charging party has been made whole. If not, the judicial process will remain available to provide complete relief, where warranted. Whether, assuming the adequacy of the voluntary settlement, a complaint will still lie based on the inherent class nature of Title VII suits, is a question that will likely depend largely on the liberality of the court and its conceptual evaluation of discrimination charges generally.

b) *Exhaustion of Contractual Remedies.* Another defense frequently raised to charges under Title VII, is that the charging party has failed to exhaust contractual remedies or, if exhausted, that he is thereby bound by the result. This defense, of course, is not endemic to equal employment law alone, but has been raised in defense to Taft-Hartley

85. 400 F.2d at 33.

86. The term "private attorney general" was first used by the Supreme Court in Newman v. Piggie Park Enterprises, 390 U.S. 400 (1968), a case envolving Title II of the Civil Rights Act of 1964 and has since become a favorite phrase of a number of Courts for emphasizing the public interest involved in suits claiming class discrimination. For a discussion of the relative merits of the "public" versus "private" nature of Title VII suits, *See,* e.g., Walker, *Title VII: Complaint and Enforcement Procedures and Relief and Remedies, supra* note 6, at 522; Berg; *Equal Employment Opportunity Under the Civil Rights Act of 1964, supra* note 4; Comment, 32 U. of CHI. L. REV. 430, *supra* note 6.

87. See cases cited note 83 *supra.*

88. The Rosen decision, however, specifically disassociated itself from the remarks made in Jenkins regarding the inherent class nature of Title VII suits and "public rights" which such suits seek to vindicate. 409 F.2d 775, at 780 note 18.

charges as well.[89] As we have seen, the Commission, upheld by the courts, has held that the failure to exhaust contract grievance machinery does not preclude an individual from seeking relief under Title VII.[90] More difficult is the question of whether an aggrieved party who has tested the merit of his grievance under the contract and has found it wanting, is subsequently precluded from relief, either from the Commission or the Courts. To date, the Commission has not adopted a policy of deference to arbitration awards, such as the Speilberg Doctrine developed by the National Labor Relations Board,[91] and will process all charges properly before it, regardless of the existence of a prior arbitration award dealing with the same subject matter.

The courts, however, have regarded the presence of a preexisting arbitration award with considerably more deference. Several decisions have held that, a party having once pursued his collective bargaining grievance procedures to the point of conclusion, has at that point made a binding election of remedies and is thereafter bound by the contract resolution, to the exclusion of Title VII relief.[92] In *Bowe* v. *Colgate-Palmolive Company,* the District Court adopted an even more restrictive approach, holding that there must be a strict and final election at the outset between contractural remedies and relief under Title VII, with a binding election being made by simply initiating the grievance procedure under collective bargaining contract.[93] On appeal to the Seventh Circuit, however, this holding was reversed.[94]

The Court characterized the situation confronting the trial court as "one in which there exists concurrent jurisdiction under the statutory scheme and under the grievance and arbitration process for the resolution of claims against an employer and a union." Viewed in this light, the Court found the analogy to labor disputes involving concurrent jurisdiction of the NLRB and the arbitration process, to be not

89. The Board and the Courts have repeatedly held that failure to utilize the contract grievance machinery does not preclude resort to the statutory remedies available under the Act. With respect to matters previously the subject of arbitration, Speilberg Mfg. Co. 36 L.R.R.M. 1152 (1955), sets forth the criteria which the National Labor Relations Board utilizes in determining whether deference should be accorded to a prior arbitration award.

90. See cases cited note 27 *supra.*

91. Powers, *supra* note 58, at 5.

92. Edwards v. North American Rockwell Corp., 291 F. Supp. 199 (C.D. Calif. 1968); Washington v. Aerojet-General Corp., 282 F. Supp. 517 (C.D. Calif. 1968); Fekete v. United States Steel Corp., 60 LC 9307 (D.C. Pa. June 11, 1969). *Contra,* Dewey v. Reynolds Metals Co., 291 F. Supp. 786 (W.D. S.D. 1968).

93. Bowe v. Colgate Palmolive Co., 272 F. Supp. 332 (S.D. Ind. 1967).

94. Bowe v. Colgate Palmolive Co., 2 F.E.P. 121 (7th Cir., Sept. 26, 1969).

merely compelling, but "conclusive." Accordingly, they held that "it was error not to permit the plaintiffs to utilize dual or parallel prosecution both in court and through arbitration so long as the election of remedy was made after adjudication, thereby precluding duplicate relief which would result in an unjust enrichment or windfall to the plaintiffs."[95]

Clearly, there is much to be said for forcing a party at some point to make an election between available remedies. Providing a complainant with several opportunities to prove his case, and delaying the ultimate resolution does not serve the ends of justice, nor promote harmonious labor relations. However, rights created by virtue of a collective bargaining agreement are not necessarily coterminous with those protected by Title VII. A respondent may well be guilty of employment discrimination under the latter, without having violated the terms of his labor agreement.[96] Whether a prior attempt at, or actual resolution through the contract machinery, will later preclude relief under Title VII, therefore, should depend on whether the rights guaranteed by the contract are the same as those protected by the Act and whether the operative facts considered, are the same in both forums. If the answer is yes to both, then, provided the Speilberg safeguards are observed, the complainant should be deemed to have made his election at the point where a final decision is first reached.

c) *Scope of Ligitable Issues.* Another defense sometimes raised at the judicial enforcement stage is the contention that the issues which the plaintiff/aggrieved party has attempted to assert through his civil action, exceed the scope of the issues raised by his complaint before the Commission. In *King* v. *George Power Co.*,[97] the court expressly rejected such a contention, holding instead that "the allegations contained in [a] complaint . . . may encompass any kind of discrimination like or related to allegations contained in the charge and growing out of such allegation during the pendency of the case before the Commission."[98] Since it is the EEOC's policy to develop not only those matters specifically alleged in the charge, but also to ferret out during the course

95. *Id.* at 123.
96. This distinction was emphasized in Dewey v. Reynolds Metals Co., 291 F. Supp. 786 (W.D. S.D. 1968), where the Court observed that the issues which the arbitrator had earlier dealt with, were wholly different from the ones raised in the Title VII suit. Under these circumstances, the arbitration award was held not to preclude an action based upon the statute rather than the collective bargaining agreement.
97. 295 F. Supp. 943 (N.D. Ga. 1968).
98. *Id.* at 947.

of the investigation any other violations of which the respondent may be guilty, this interpretation considerably expands the issues which an aggrieved party may raise in a subsequent court action.[99] The reasons cited by the court in justification of this policy were twofold:

(1) That an aggrieved party is often ignorant of "the full panoply of discrimination which he may have suffered" and may be "ignorant of or unable to throughly describe the discrimination to which they are subjected."[100]

(2) That if the range of issues that could subsequently be litigated did not include the entire subject matter of the conciliation efforts between the EEOC and the respondent, the statute's emphasis on voluntary settlement would be seriously curtailed.[101]

This reasoning, while having merit from a policy standpoint, is properly subject to a number of criticisms. First of all, permitting a shot gun approach to Title VII suits removes any incentive for the respondent to cooperate in the investigation of charges at the Commission level. While many respondents would be willing to co-operate in resolving specific allegations of discrimination, they are understandably reluctant to participate in a wholesale fishing expedition without any indication as to specific nature of the violations under investigation. This is especially true since respondents may very well later find themselves forced to defend against these unalleged and undisclosed violations. Certainly, no self-respecting attorney will want his client subjected to such an inquest without greater safeguards than the Commission is presently willing to grant. Furthermore, comprehensive investigations naturally lead the Commission to seek discovery beyond that relevant to the charges under investigation, and thereby exceed the standard established by the Act for delimiting the scope of the Commission's discovery powers.[102] Moreover, encouraging far ranging and sweeping investigations only serves to delay even further the resolution of the specific complaint which originally triggered the Commission's intervention. Thus, the interests of the individual who initially invoked federal assistance may be subordinated to those of unknown, undefined and often uninterested parties whom a crusading

99. Powers, *supra* note 58, at 6-7.
100. 295 F. Supp. at 947.
101. *Id.*
102. Under section 710(a), Commission informational demands are restricted to "the production of documentary evidence relevant or material to the *charge under investigation.*" (Emphasis added.)

Commission deems must be protected. Undoubtedly, there will be further decisions delineating the scope of litigable issues, and it is hoped these competing considerations will be given greater weight than has previously been the case.

d) *Class Action Suits.* Some of the most difficult procedural questions arising under Title VII have involved the subject of class action lawsuits. Basically, the courts have been called upon to determine whether the mandates set forth in Title VII can be vindicated on a class, as well as an individual basis and if so, what type of relief should be available to individual members of the class. On the one hand, the statute's graduated enforcement mechanisms consisting of the complaint, investigation, conciliation and litigation, seemingly envision the resolution of discrimination allegations on an individual, case by case basis. Yet, as many courts have recognized, "it would be wasteful, if not vain, for numerous employees all with the same grievance to have to process many identical complaints with the EEOC."[103] In the end, this latter reasoning has prevailed, provided however that certain limitations with respect to the scope of the class, areas of litigation and the nature of the relief are observed.[104]

One of the first cases dealing with class action suits was *Hall* v. *Wertham Bag Corp.*[105] Here, the court concluded that as long as the requirements for the maintenance of a class action under rule 23(a), Federal Rules of Civil Procedure,[106] are met, a class suit seeking injunctive relief prohibiting future discrimination would lie, even though only one member of the class had in fact filed charges with the Commission. Subsequently, however, other courts, while acknowledging the propriety of class action suits under Title VII, held that the class encompassed by the lawsuit, must be limited to those who had filed

103. Oatis v. Crown Zellerback Corp., 398 F.2d 496 (5th Cir. 1968).

104. Jenkins v. United Gas Corp., 400 F.2d 28 (5th Cir. 1968); Colbert v. H. K. Corp., 295 F. Supp. 1091 (N.D. Ga. 1968); Banks v. Lockheed-Georgia Co., 46 F.R.D. 442 (N.D. Ga. 1968).

105. See cases cited note 81 *supra.*

106. FED. R. CIV. P. Rule 23 provides:

(a) Prerequisites to a Class Action. One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims of defenses of the representative parties are typical of the claims of defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

(b) Class Actions Maintainable. An action may be maintained as a class action if the requirements of subdivision (a) are satisfied, and in addition: (2) the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the case as a whole.

charges with the Commission.[107] The recent Fifth Circuit decision in *Oatis* v. *Crown Zellerback Corp.*,[108] goes a long way towards resolving the above conflict in authority and is probably the leading case on the subject of class action suits under Title VII. In *Oatis,* the court observed that, permitting class actions where not all the members thereof had utilized the assistance of the Commission would not in any way frustrate the purposes of the Act, since "if it is impossible to reach a settlement with one discriminatee, what reasons would there be to assume the next one would be successful."[109] Why should complainants be forced to undertake administrative relief which has already proven itself unavailing, they reasoned. The better approach, in their eyes, would be that, "once an aggrieved person raises a particular issue with the EEOC which he has standing to raise, he may bring an action for himself and the class of persons similarly situated."[110] The court then went on to lay down the following guidelines:

> We thus hold that a class action is permissible under Title VII of the Civil Rights Act of 1964 within the following limits. First, the class action must, as it does here, meet the requirements of Rule 23(a) and (b). Next, the issues that may be raised by plaintiff in such a class action are those issues that he has standing to raise (i.e., the issues as to which he is aggrieved, see § 706(a), supra), and that he has raised in the charges filed with the EEOC pursuant to § 706(a). . . . Additionally, it is not necessary that members of the class bring a charge with the EEOC as a prerequisite to joining as co-plaintiffs in the litigation. It is sufficient that they are in a class and assert the same or some of the issues. . . . They, as co-plaintiffs, must proceed however, within the periphery of the issues which Hill could assert. . . .[111]

These last two caveats appear to be the most troublesome. Whether a given charging party is sufficiently representative of the group for whom the class suit is filed and has asserted issues applicable to the entirety of the class are questions that must be resolved on a case by case basis. Thus far, a number of courts have refused to allow an applicant for employment or a dischargee to represent a class em-

107. Dent v. St. Louis-San Francisco Railway Co., 265 F. Supp. 56 (N.D. Ala. 1967); Mondy v. Crown Zellerback, 271 F. Supp. 258 (E.D. La. 1966); Miller v. International Paper Co., 290 F. Supp. 401 (S.D. Miss. 1967).
108. Oatis v. Crown Zellerback Corp., 398 F.2d 496 (5th Cir. 1968).
109. 398 F.2d at 498.
110. *Id.*
111. 398 F.2d at 499.

bodying present employees, or vice versa.[112] Also proving troublesome is the other *Oatis* requirement, that the litigable issues must be "within the periphery of the issues which the charging party could assert."[113] A number of courts have and are presently grappling with determinations of this nature.

In *Hall* v. *Wertham Bag Corp., supra,* the court restricted remedial assistance for the class to injunctive relief, denying the request for the ancillary relief or reinstatement and back pay. Noting that the Commission had not been given an opportunity to conciliate each of the individual claims, the Court held that the purpose of the administrative remedy requirement had not been satisfied. Particularized relief, therefore, under this reasoning should be confined to those who have utilized the Commission to rectify the wrongs allegedly committed against them, and not formulated by a court in a comprehensive proceeding. This position has received approval from a number of courts,[114] though the Seventh Circuit in *Bowe* v. *Colgate Palmolive* and two recent District Court decisions have now ruled otherwise. In *Bowe,* the Court stated that it could perceive no justification for granting injunctive relief in class action suits, while denying other forms of relief. The purpose of the charge filing requirement is to provide for notice to the charged party and to bring to bear the voluntary compliance and conciliation functions of the EEOC, and the Court observed that this purpose is fulfilled when a charge is filed asserting grievances common to the class. Hence, in their estimation, there was no reason why in class action suits under Title VII, the class, including any and all members thereof, should be denied any form of relief to which they may be entitled. In conclusion, the Court felt that "the clear purpose of Title VII is to bring an end to the prescribed discrimination practices and to make whole, in a pecuniary fashion, those who have suffered by it."[115] In *Local 186 v. Minn. Mining & Mfg. Co.*[116] the Court, relying on *Oatis* and several other recent Fifth Circuit cases, concluded that the public interest "should be served

112. *See,* Johnson v. Georgia Highway Express, Inc., 70 L.R.R.M. 2664 (N.D. Ga. 1968); Russell v. Alpha Portland Cement Corp. 69 L.R.R.M. 2256 (N.D. Ala. 1968); Hogan v. Capital Fish Co. 70 L.R.R.M. 3295 (N.D. Ga. Feb. 28, 1969). *cf.* Baxter v. Savannah Sugar Refining Co. 46 F.R.D. 56 (S.D. Ga. 1968); Ward v. Luttrell, 292 F. Supp. 162 (E.D. La. 1968).

113. 398 F.2d at 499.

114. Williams v. American Saint Gobain Corp., 70 L.R.R.M. 2325 (E.D. Okla. 1968); Hayes v. Seaboard Coast Line R.R., 46 F.R.D. 49 (S.D. Ga. 1968); Hall v. Werthan Bag Corp., 251 F. Supp. 184 (M.D. Tenn. 1966).

115. Bowe v. Colgate-Palmolive Co. 2 F.E.P. 121, at 126.

116. 71 L.R.R.M. 2427 (N.D. Ind. June 2, 1969).

just as much, if not more, by relief through awards for back wages and reinstatement to obscure class members as by the issuance of an injunction."[117] Likewise, in *Madlock* v. *Sardis Luggage Co.*,[118] it was held that all class members, since they had the same basis and standing as the original plaintiff, were entitled to the same type of relief, including reinstatement or hiring as new employees, with or without back pay, within the Court's discretion. As the reader can see, this is another of the many procedural questions which must await further clarification at the appellate level.

Thus, the concept of class action suits under Title VII is now well established, though the emphasis and scope of such litigation must yet be brought into sharper focus.

Conclusion

As the foregoing indicates, most of the more controversial procedural questions have now been litigated. As a result, many of the technical requirements associated with Title VII actions, which had earlier proved stumbling blocks to court enforcement, have now been removed. Moreover, through this process of "elucidating litigation," even the answers to the remaining procedural questions have been largely foreshadowed. Avowedly, the federal courts in general, and the appellate courts in particular have made it abundantly clear that they will not permit technical, procedural aspects of the statute to victimize the very persons whom its substantive provisions were designed to protect.

Thus, with only minor exceptions, the courts have adopted a permissive attitude toward Title VII's formal requirements, holding most of the limitations expressed in the statute to be "directory" rather than "mandatory." Consequently, the incidence of dismissals, non-suits and summary judgments stemming from the failure of complainants or the Commission to comply with the Act's legal technicalities have sharply declined. Furthermore, by virtue of the Commission's regulation allowing either party to request the dispatching of the "30-day letter" after the complaint has been with the Commission for 60 days, "aggrieved parties" are now afforded an expedited method for obtaining judicial relief. This combination of relaxed preliminary prerequisites and expedited court action, should serve to streamline the prosecution of

117. 71 L.R.R.M. at 2435.
118. 60 CCH Lab. Cas. 9304 (N.D. Miss. August 13, 1969).

"unequal employment opportunity complaints" through the Commission stage and onto the judicial level. Victims of employment discrimination need no longer wait for the processes of an understaffed and overloaded Commission to run their course in order to file suit, and once in court, they need have less fear of having their case dismissed because of technical shortcomings. Clearly, facilitation of judicial relief under Title VII is now the hallmark of decided case law.

In spite of this liberalizing trend, however, meaningful and effective relief for both individuals and minority groups as such under Title VII is still a long process. Predictably, conciliation has proven a less than satisfactory answer. Even where the Commission's role is confined to a minimum, pursuing court action can be a lengthy, time consuming and expensive process. The end result, therefore, even assuming an aggrieved party opportunely avails himself of judicial means of enforcement, is that "appropriate relief" is often years away. In the meantime, the effects of employment discrimination continue to make themselves felt in the day to day lives of those affected.

In recognition of the injustices caused by excessive delay, two bills stressing speedier and more effective remedial action have recently been introduced and are presently pending before Congress.[119] It may well be that their disposition will mark the second phase in the "epic legislative struggle" for civil rights in employment. The success of these proposals should not be assumed, however. Judging from the Congressional reception accorded Title VII, both before and after passage, and from Congress's reaction to subsequent efforts at amendment, it is not altogether promising that these new measures will fare any better than their predecessors.[120] Even were a substantial alteration in the

119. The most recent of the many bills that would alter the present system of Title VII enforcement is (S-2806), introduced August 8, 1969, as the Nixon administration's proposal for improving the effectiveness of the present law. Also pending before the 91st Congress is (S-2453), introduced June 19, 1969, by Senator Williams (D-N.J.), Chairman of the Labor Subcommittee of the Senate Labor Committee, and several other Senators. Basically, the two bills differ in that (S-2806) would authorize the Commission itself to institute suit in Federal District Courts to remedy Equal Employment Opportunity violations, while (S-2453) would empower the Commission to issue cease and desist orders enforceable through resort to the Federal Appellate Courts, similar to the present enforcement provisions of the National Labor Relations Board. Numerous attempts had been made previously to the 91st Congress to amend Title VII so as to put more teeth in its enforcement provisions. Most of these proposals have been structured along the lines of (S-2453) and all have, thus far, failed to gain passage.

120. Since its passage in 1964, there have been numerous attempts on the part of Congress to strengthen Title VII's enforcement powers. The House passed the Hawkins Bill (H.R. 10065) on April 27, 1966, which would have given the EEOC cease and desist powers like those contained in the present (S-2453), but the Senate failed to act on the measure. In April, 1968, the Senate Labor Committee reported out a similar bill, (S-3465) but no

Act's present enforcement scheme to gain the force of law, the procedural hasselings that have occupied so much of the attention of federal courts in Title VII cases, would not necessarily have been expended in vain. In resolving these technical issues on a case by case basis, the federal courts have made irrefutably clear their preference for dealing with the underlying substantive issues in equal employment disputes, wherever possible. There is certainly no reason to suspect that this basically pragmatic philosophy on the part of the federal judiciary will change with the passage of new legislation. Consequently, if Title VII litigation thus far is any indication, aggrieved parties will continue to find judicial relief increasingly more accessible, regardless of the precise nature of the enforcement machinery at their disposal.

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further action was taken. Other bills designed to improve the effectiveness of Title VII enforcement have also met similar fates (S-2029, H.R. 6228, and H.R. 6229).